Editorial

Egenberger and Comparative Law: A Victory of the Direct Horizontal Effect of Fundamental Rights

The recent Egenberger judgment of the CJEU\(^1\) can be seen as a milestone in the European debate on the horizontal effect of fundamental rights. This decision established, with beautiful clarity, two principles (among others): Firstly, the prohibition of discrimination laid down in Article 21(1) of the Charter is mandatory as a general principle of EU law, and is sufficient in itself to confer on individuals a right which they may rely on as such in disputes between them in a field covered by EU law.\(^2\) Secondly, like Article 21 of the Charter, Article 47 of the Charter on the right to effective judicial protection is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right which they may rely on as such.\(^3\) In other words: Both Article 21 and Article 47 of the Charter have direct horizontal effect.\(^4\)

These principles do not mark any revolution in the ECJ/CJEU jurisprudence. Arguably there exists a logical line of continuity from van Gend and Loos.\(^5\)

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2 Egenberger (n 1) para. 76, with reference to Case C-176/12 Association de médiation sociale, ECLI:EU:C:2014:2, para. 47.  
3 Egenberger (n 1) para. 78.  
to Egenberger, passing through Walrave, Defrenne, Angonese, Mangold, Küçükdeveci, and others. As a result, the prohibition of discrimination as a general principle of EU law, now codified in Article 21 of the Charter, has direct horizontal effect in all fields covered by EU law.

**What Does this Have to Do with Comparative Law?**

Last year, I published a chapter on the judicial dialogue between the ECJ/CJEU and national courts concerning the effect of European fundamental rights on private litigations. In a section of this chapter, I argued that the ECJ in Angonese took a position in the cross-national (comparative) judicial dialogue on the horizontal effect of fundamental rights, freedoms and constitutional principles, reinforcing the direct horizontality doctrine.,

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9 Case C-144/04 Mangold [2005] ECR I-9981.
13 Angonese (n 8).
14 Colombi Ciacchi (n 12) 216.
15 The remaining part of this Editorial, starting from the main text that follows the present footnote, consists in a shortened and updated version of the section ‘Angonese and the